

121 FERC ¶ 61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suede G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER07-1388-000

ORDER CONDITIONALLY ACCEPTING PROPOSED AMENDMENTS

(Issued November 9, 2007)

1. On September 12, 2007, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a proposal to amend its Transmission and Energy Markets Tariff (TEMT) regarding auction revenue rights (ARRs) and long-term transmission rights (LTTRs). In this order, we conditionally accept the proposed amendments to be effective September 13, 2007, and require a compliance filing, as discussed below.

I. Background

2. On January 29, 2007, in response to the Commission's Order No. 681,¹ the Midwest ISO submitted, pursuant to section 205 of the Federal Power Act (FPA), revisions providing for LTTRs. The Midwest ISO also proposed, pursuant to section 205 of the FPA, to modify the rules for allocating short-term transmission rights. The Commission determined that Stage 2 allocation² of revenues is reasonable and in compliance with Order No. 681. In the Commission's May 17, 2007 order,³ the Commission accepted the Midwest ISO's LTTR proposal, subject to modification.

3. On June 18, 2007 and July 16, 2007, the Midwest ISO submitted two compliance filings in accordance with the directives of the LTTR Order. The June 18, 2007 Compliance Filing addressed: (1) point-to-point transmission rights; (2) transmission

¹ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, at 108-428 (2006), *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201, at P 12-15 (2006) (Order No. 681 or the Final Rule).

² Stage 2 allocation is the allocation of short-term ARRs.

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,143 (2007) (LTTR Order).

rights for entities that fund transmission upgrades; (3) term for LTTRs; (4) priority of LSEs in LTTR allocation; (5) reassignment of LTTRs; (6) allocation of short-term ARR; and (7) ministerial modifications. In the October 18, 2007 Compliance Order,⁴ the Commission accepted in part and rejected in part the compliance filings, and required a further compliance filing.

4. The Midwest ISO notes that pursuant to the LTTR Order's conditional approval of the TEMT's provisions on ARRs and LTTRs, the Midwest ISO has commenced the data gathering process that will result in establishing and registering the ARR entitlements for Year 1 Annual ARR Allocation and beyond. During this process, however, the Midwest ISO states that it has learned that some of the TEMT provisions submitted in the June 18, 2007 Compliance Filing are being interpreted by some market participants in ways never intended by the Midwest ISO. Therefore, the Midwest ISO states that it is proposing revisions that would clarify and correct the ARR provisions that have been misinterpreted.

II. Midwest ISO's Proposal

5. On September 12, 2007, the Midwest ISO submitted amendments to its TEMT, stating that the changes clarify and correct revisions regarding ARRs and LTTRs that the Midwest ISO submitted in its June 18, 2007 Compliance Filing.⁵ Midwest ISO states that both the LTTR proposal and the June 18, 2007 Compliance Filing included provisions that some parties now interpret as permitting the use of an ARR zone as an ARR receipt point. The Midwest ISO states that it did not intend such a result. Midwest ISO believes that it would be inappropriate to allow an ARR zone to be treated as an ARR receipt point because ARR zones represent withdrawal points. In contrast, the Midwest ISO asserts that ARR receipt points must, in general, be reserved source points (RSP), which constitute injection points within the network system. Furthermore, for RSP resource qualification purposes, the Midwest ISO states that the RSP has to be a network resource designated by the Network Integration Transmission Service customer to meet its network load obligation (i.e., a designated network resource).

6. Under the generation resource qualification requirements, in order for a supply generation resource to qualify for inclusion as an RSP, the Midwest ISO affirms that a qualified market participant must have had a capacity and energy ownership interest in, or a capacity and energy contract with, the supply generation resource. As such, ARR

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,062 (2007) (October 18, 2007 Compliance Order).

⁵ The changes that the Midwest ISO proposes to its TEMT in the September 12, 2007 filing were not requested by the Commission in the LTTR Order. Therefore, the filing was docketed as ER07-1388-000 and we are reviewing this filing under section 205 of the FPA. 16 U.S.C. § 824d (2000).

receipt points represent the resources (i.e., RSPs) historically used by a market participant to serve load in an ARR zone and not the ARR zone in its entirety. According to the Midwest ISO, this description is also applicable to transmission customers taking point-to-point service, where the ARR receipt points should be physical generator resources. The Midwest ISO proposes to make this clarification for point-to-point and network rights where the points of receipt are within the Midwest ISO footprint. Interface points of receipt for point-to-point and network rights that are external to the Midwest ISO footprint will constitute the ARR receipt points for the corresponding ARR entitlements. The Midwest ISO further clarifies that the ARR zone can be a RSP and, therefore, an ARR receipt point, under the following two exceptions:

- (1) If the ARR zone contains behind-the-meter generation that is specified as a grandfathered agreement (GFA) resource and that resource was specified in the GFA template used for the FERC hearing process; or
- (2) Under hubbing scenarios (two or more entitlements representing hubbing transactions) as already described in section 43.2.3 of the TEMT.⁶

7. Midwest ISO states that these amendments are required on an expedited basis in order to clarify that ARR zones cannot, in general, serve as ARR receipt points. First, the Midwest ISO proposes to revise section 42.5 of the TEMT,⁷ concerning ARR specifications, to clarify that the ARR receipt point specified in a given ARR may only be the commercial pricing node for the relevant RSP or an interface. The Midwest ISO further emphasizes that only a designated network resource can qualify as an RSP. Second, the Midwest ISO proposes to modify section 43.2.3 of the TEMT,⁸ concerning registration of ARR receipt points as control areas, to ensure that, where points of receipt are specified as control areas during the first year of the annual ARR registration, the corresponding existing entitlements will be defined in terms of the RSPs within those control areas. Finally, the Midwest ISO proposes to remove the last paragraph of section 43.2.3 of the TEMT⁹ to eliminate any potential for future misinterpretation of the tariff's provisions on permissible ARR receipt points. The Midwest ISO believes that these proposed revisions to the TEMT will effectively clarify ARR receipt point requirements for its market participants. The Midwest ISO requests waiver of the

⁶ Midwest Indep. Transmission Sys. Operator, Inc., FERC Electric Tariff, Third Revised Vol. No. 1, Original Sheet No. 609.01.

⁷ Midwest Indep. Transmission Sys. Operator, Inc., FERC Electric Tariff, Third Revised Vol. No. 1, First Substitute Original Sheet No. 604A.

⁸ Midwest Indep. Transmission Sys. Operator, Inc., FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Fourth Revised Sheet No. 611.

⁹ Midwest Indep. Transmission Sys. Operator, Inc., FERC Electric Tariff, Third Revised Vol. No. 1, Substitute Third Revised Sheet No. 613.

Commission's prior notice requirement to permit an effective date of September 13, 2007 to ensure the applicability of the proposed tariff changes during the remainder of the ongoing initial ARR registration process.

III. Notices of Filings and Responsive Pleadings

8. Notice of the Midwest ISO's filing was published in the *Federal Register*, 72 Fed. Reg. 56,734 (2007), with comments, interventions and protests due on or before October 3, 2007. Duke Energy Shared Services, Inc. (Duke Energy) and Ameren Services Company (Ameren) filed timely motions to intervene and comments in this proceeding. Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier Energy) filed a motion to intervene out of time. The Midwest ISO filed an answer to the comments.

9. Ameren and Duke Energy both filed comments indicating that they generally support the Midwest ISO's filing. Ameren explains that the Midwest ISO's filing is a reasonable means for the Midwest ISO to implement its ARR process and to provide market participants with a clear and consistent interpretation of its tariff. Duke Energy explains that while it has no objection to clarifying tariff language if others find it helpful, any assertion that the Midwest ISO's tariff permits a party to use an ARR zone for baseload reserved source set (BRSS) or peak reserved source set (PRSS) designation in connection with network service would be an impermissible collateral attack on the LTTR Order and the October 18, 2007 Compliance Order. It asserts that any such claims should be rejected, and the Midwest ISO's amendment should be accepted as consistent with the original intent of the LTTR Order, i.e., only designated network resources are eligible for BRSS and PRSS designation in connection with network transmission service.

10. While both Ameren and Duke Energy generally support the Midwest ISO's filing, they seek clarification as to the possible exceptions to an ARR zone being designated as an RSP. They express concern that the Midwest ISO's amendment, which only lists on Sheet No. 609.01 two exceptions to an ARR zone being designated as an RSP, could be construed as abrogating or superseding the third exception set forth in the Midwest ISO's TEMT.¹⁰

11. While they believe that the Midwest ISO did not intend to eliminate the third exception, they request that the Commission direct the Midwest ISO to clarify that the third exception still applies.

¹⁰ See Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Fourth Revised Sheet No. 612 at section 43.2.3 (when market participants do not agree to the ARR receipt point definition, then for certain point-to-point transmission service not identified during the registration process as supporting generation capacity transactions, the ARR zone within the control area will be the default ARR source).

12. The Midwest ISO states in its answer that it agrees with Duke Energy and Ameren that the third exception was inadvertently omitted from Sheet No. 609.01. Accordingly, the Midwest ISO states that it is prepared to amend the TEMT by revising Sheet No. 609.01 as follows:

An ARR Zone may be a RSP under the following ~~two~~ exceptions ~~only~~:
(a) if the ARR Zone contains behind-the-meter generation specified as a DNR in a NITS agreement or specified as a GFA resource committed to in GFA proceedings before the FERC, and (b) ~~under hubbing scenarios as described~~ pursuant to exceptions set forth in Section 43.2.3.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2007), the Commission will grant Hoosier Energy's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer because it has provided information that assisted us in our decision-making process.

B. Commission Determination

16. We will conditionally accept the Midwest ISO's proposed amendments to the TEMT, which are generally unopposed.¹¹ The proposed amendments, as further modified by the Midwest ISO, are just and reasonable as they clarify ARR receipt point requirements for market participants. With regard to the third exception to the general rule that an ARR zone may not be designated as an RSP, we accept the Midwest ISO's commitment to revise Sheet No. 609.01 and direct the Midwest ISO to submit a revised tariff sheet in a compliance filing within 30 days of the date of this order. Further, we find that the Midwest ISO has shown good cause to grant its request for waiver of the

¹¹ We agree with Duke Energy that the LTTR Order and the October 18, 2007 Compliance Order provided that only designated network resources are eligible for BRSS and PRSS designation in connection with network transmission service.

prior notice requirement and we will make the proposed amendments effective September 13, 2007, as requested.¹²

The Commission orders:

(A) The Midwest ISO's proposed amendments are hereby conditionally accepted, effective September 13, 2007, as discussed in the body of this order.

(B) The Midwest ISO is hereby directed to make a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.
Acting Deputy Secretary.

¹² *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).